

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KATHERINE LOUISE IMMESOTE)
Claimant)

VS.)

WESLEY TOWERS, INC.)
Respondent)

Docket No. 1,028,633

AND)

KS. ASSN. OF HOME FOR THE AGING)
Insurance Carrier)

ORDER

Respondent and its insurance carrier request review of the June 14, 2006 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

After the preliminary hearing, the Administrative Law Judge (ALJ) entered an Order that appointed Dr. Paul Stein, pursuant to K.S.A. 44-516, to examine claimant and “offer opinions as to the following: diagnosis; recommendations for treatment; whether Claimant’s current complaints or presenting condition is causally related to Claimant’s work duties for Respondent.”¹ The ALJ further noted that claimant’s preliminary hearing requests were taken under advisement pending the doctor’s report and provided counsel 7 days after the receipt of the doctor’s report to “offer their written arguments/comments with respect to Claimant’s preliminary hearing requests or to request further evidentiary hearing.”²

The respondent requests review of whether the claimant provided timely notice to the respondent. The respondent notes that at the conclusion of the preliminary hearing the ALJ stated that he was finding adequate notice of an injury.

¹ ALJ Order (Jun. 14, 2006) at 1.

² *Id.* at 2.

Claimant argues there is no jurisdiction regarding this appeal because there has been no order issued by the ALJ regarding notice, timely claim or whether certain defenses apply. Instead, the ALJ's written order simply appointed a doctor to perform an independent medical examination of claimant and then address certain issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Initially, the Board must determine whether the ALJ's comments from the bench at the conclusion of the June 13, 2006 preliminary hearing constituted an effective order. In his comments the ALJ stated the claimant provided timely notice.

K.S.A. 44-525(a) provides in pertinent part:

Every finding or award of compensation shall be in writing signed and acknowledged by the administrative law judge and shall specify the amount due and unpaid by the employer to the employee up to the date of the award, if any, and the amount of the payments thereafter to be paid by the employer to the employee, if any, and the length of time such payment shall continue. The award of the administrative law judge shall be effective the day following the date noted in the award.

The foregoing statute specifically requires that every finding of an ALJ shall be in writing and signed by the Judge. In addition, the statute specifically provides the effective date of the decision shall be the day following the date noted in the decision. Accordingly, the comments made from the bench by the ALJ did not constitute an effective Order until written, signed and dated.

The ALJ's written Order simply appointed a doctor to conduct an independent medical examination of claimant and then address specific issues including whether claimant's condition is causally related to his work duties but the order did not include a specific finding with regard to the issue of notice. And the ALJ further noted that after receipt of the doctor's report the parties could request a further evidentiary hearing.

Absent a written finding regarding the notice issue as required by K.S.A. 44-525(a) the ALJ's Order simply appoints a doctor to conduct an independent medical examination of the claimant.

The ALJ's decision to have an independent medical examination performed on the claimant is interlocutory in nature and made during the litigation of a workers compensation case pending before the ALJ. This is not a final order that can be reviewed pursuant to K.S.A. 44-551. Neither is this an order entered pursuant to the preliminary hearing statute

K.S.A. 44-534a, as preliminary hearing orders are limited to issues of furnishing medical treatment and payment of temporary total disability compensation. The Order now before the Board pertains to an interlocutory matter, ordering an independent medical examination, over which an ALJ has authority to order during the litigation of the case. Because the ALJ did not exceed his jurisdiction and authority in appointing Dr. Stein, the Board does not have the jurisdiction and authority to review that portion of the Order.

WHEREFORE, it is the finding of the Board that the that the application for review filed by the respondent is dismissed and the Order of Administrative Law Judge Bruce E. Moore dated June 14, 2006, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of August 2006.

BOARD MEMBER

c: Brian D. Pistotnik, Attorney for Claimant
Michael L. Entz, Attorney for Respondent and its Insurance Carrier